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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,784	08/04/2003	Dirk Vorsteher	1003-0055	6881
7590 03/12/2007 Joel H. Bock Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd. 200 West Adams Street, Suite 2850 Chicago, IL 60606			EXAMINER DEUBLE, MARK A	
			ART UNIT	PAPER NUMBER
			3651	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/12/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/633,784

Applicant(s)

VORSTEHER ET AL.

Examiner

Mark A. Deuble

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4,5,9,10,12,14,15,21-23 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4,5,9,10,12,14,15 and 21 is/are allowed.
- 6) ☒ Claim(s) 22-23 and 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

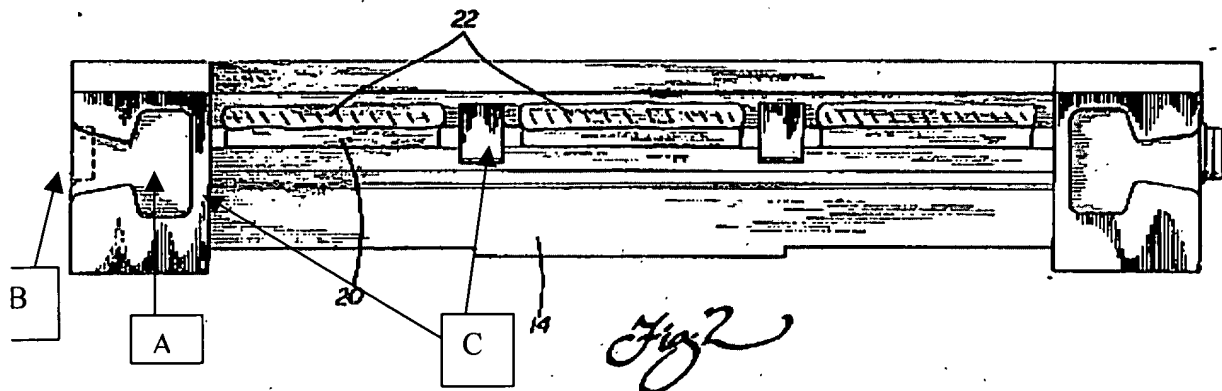
### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bandy Jr. et al. (U.S. Patent No. 5,131,724) in view of British document 2 095 195 A.

Bandy, Jr. et al. shows a conveyor pan for underground face or gate conveyors that has a pair of cast side parts 13 and 14 each of which includes vertical arms 25/26 extending over a height of the bottom and top runs of the conveyor with an essentially W-shaped in cross section (see Fig. 3). The middle portion of each vertical arm forms a crown to which a conveyor pan base 11 is welded. At the bottom side of the vertical arm, a lower case flange arm extends outwards to the rear and a foot flange extends inwards to a base plate 25 that is welded to the bottom of the foot flange to close the bottom run of the conveyor. The end faces of the side parts have accepting elements formed by pockets A, that are open at their ends B, and cast in the side parts for joining adjacent conveyor pans with a toggle bolt (not shown) and the side parts have cast vertical ribs C, some of which serve to stiffen the cast pockets (see Fig. 2 reproduced below).



At the top of the side parts, in the region of the top run of the conveyor, the cast vertical arms have an integral end section with a generally T-shaped cross section that could be used as a machine track for an extraction machine. Thus Bandy Jr. et al shows generally all the structure required by claims 22 and 26 except for the side and top profiles that are nested in upper sections of the cast vertical arms and exchangeably welded onto the side parts in the region of the top run against which scraper ends are guided in the top run.

However, the British document teaches that wear liners 8 with side and top profiles 9 that have a profile shape matched to the ends of a scraper 6 and that are nested in upper sections 10/15 of the vertical arms of the conveyor pan advantageously avoids wear to the conveyor pan assembly and facilitates conveyor maintenance by requiring only the replacement of the wear liner 8 rather than dismantling of the conveyor pan assembly (see Col. 1, ln. 16-46). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use a wear liner nested within the upper sections of the vertical arms of the conveyor pan of Bandy Jr. et al. When this is done, the resulting conveyor pan would have all the structure required by the claims.

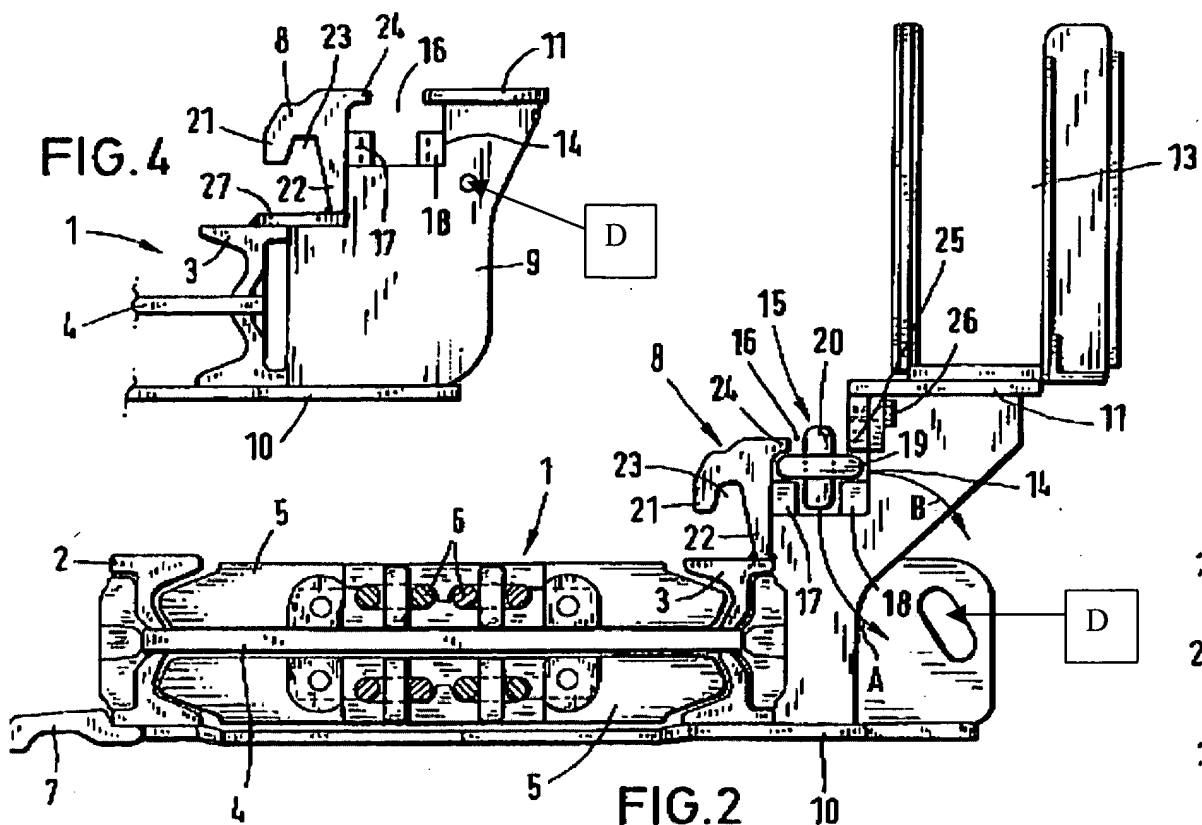
In regard to the limitation of the claim that the side and top profiles are exchangeably welded to the side parts, it is noted that the side profiles of the wear liner taught by the British document are exchangeably attached to the side parts by retaining projections 13 and hold down strips 15 (which may be integrally formed on the vertical arm section 10) or by bolts rather than being exchangeably welded onto the side parts as required by the claim. However, it should also be noted that this limitation is a product by process limitation and that MPEP §2113 states that “The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). Here, although the conveyor pan is produced by a different process, the resulting apparatus is substantially the same as the claimed apparatus, with exchangeable side and top profiles fixed to the side parts of the conveyor pan in the region of the top run against which the scraper ends are guided.

The applicant should also note that “The Patent Office bears a lesser burden of proof in making out a case of prima facie obviousness for product-by-process claims because of their peculiar nature” than when a product is claimed in the conventional fashion. In re Fessmann, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983)

3. Claims 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bandy Jr. et al. in view of British document number 2 095 195 A as applied to claim 22, and further in view of Merten et al. (U.S. Patent No. 5,601,341).

Bandy Jr. et al. as modified according to the teachings of the British document would have all the structure required by claims 25 and 27-28, except for the side part on the face side that that is provided with a machine track for an extraction machine as required by claim 25, except for the cast vertical ribs for stiffening in addition to that provided by the accepting pockets, and except for the cut-outs onto which lifting eyes or similar are fastened as required by claim 28.

Merten et al. shows a conveyor pan similar to that of Bandy Jr. et al. with cast side parts 2,3 welded to a conveyor pan base 4 and a base plate 10. The side part 2 has a cast flange arm 7 extending outwards and to the rear from the side part 2. Merten et al. teaches that this flange arm advantageously used as a machine track for a peripheral mining machine as known in the art (col. 3, ln. 57-60). Additionally, the side part 3 has vertical ribs 9 attached thereto that are provided with cutouts D onto which lifting eyes or similar could be fashioned. (See Figs. 4 and 2 reproduced below)



Merten et al. teaches that these vertical ribs 9 may advantageously be used to support a chain duct for a driving gear chain as is known in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the conveyor pan of Bandy Jr. et al. with the cast flange arm and vertical ribs of Merten et al. to provide a machine track for a peripheral mining machine such as an extraction machine and to provide a support for a chain duct for a driving gear chain. When this is done, the resulting apparatus would have generally all the structure required by claims 22 and 25-28.

4. Claim 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Bandy Jr. et al. in view of British document number 2 095 195 A as applied to claim 22 above, and further in view of Bandy Jr. (U.S. Patent No. 6,401,912).

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Bandy Jr. et al. as modified in view of Merten et al. shows generally all the structure required by the claims, however, it does not disclose how the conveyor base is formed. Bandy Jr. '912 teaches that the conveyor base 26 can advantageously be fabricated of mild rollers steel to reduce the cost of the conveyor. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the conveyor base 11 of Bandy Jr. et al. of rolled steel to reduce the cost of the conveyor as taught by Bandy, Jr. '912. When this is done, the resulting conveyor pan would have all the structure required by claims 4 and 19.

***Response to Arguments***

5. Applicant's arguments filed December 19, 2006 have been fully considered but they are not persuasive in light of the new grounds of rejection.

***Allowable Subject Matter***

6. Claims 4-5, 9-10, 12, 14-15, and 21 are allowed.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,



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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

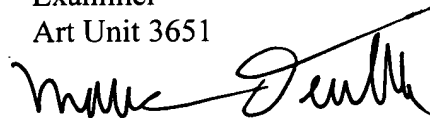
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (571) 272-6912.

The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mark A. Deuble  
Examiner  
Art Unit 3651



md